Justice of the Peace
and
LOCAL
GOVERNMENT REVIEW
ESTABLISHED 1837

[Registered at the General Post Office as a Newspaper]

LONDON :
SATURDAY, FEBRUARY 11, 1956

Vol. CXX. No. 6 Pages 80–95

Offices : LITTLE LONDON, CHICHESTER, SUSSEX

Chichester 3637 (Private Branch Exchange).

Showroom and Advertising: 11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.

Price 2*s.* 3*d.* (including Reports), 1*s.* 3*d.* (without Reports).

CONTENTS

REPORTS

NOTES OF THE WEEK

Unfit for Human Food

A small piece of extraneous matter in an otherwise edible and wholesome bun is one thing: a piece of used and dirty bandage in a loaf of bread is quite another, as was emphatically decided in a case reported in *The Times* of January 31.

This was an appeal by Case Stated against conviction by justices, of a well-known bakery company, under s. 9 of the Food and Drugs Act, 1938. The evidence was that part of a used and dirty bandage had been found in the loaf. For the appellant, it was argued that s. 9 applied to contaminated or polluted food, and that there was no evidence to show that the bread was unfit for human consumption.

Hilbery, J., observed that the bandage might be toxic in the extreme, and the Lord Chief Justice, in dismissing the appeal, said he did not consider it necessary to deliver a judgment.

This decision should dispel any wrong idea entertained about the effect of the decision in *J. Miller, Limited* v. *Battersea Borough Council* [1955] 3 All E.R. 279; 119 J.P. 569, which was referred to and distinguished in the present case.

Evidence of Character

Textbooks say that evidence of a prisoner's good character is always admissible, but it must be evidence of general reputation and not of specific instances of good conduct. In fact, courts often relax the rule and allow evidence to be given to prove how well the prisoner has behaved on various occasions in order to show that he is unlikely to have committed the kind of offence with which he stands charged. There is common sense in this, for the evidence really helps to establish that the prisoner has the right to a good reputation. Of course, in putting good character in issue, the defendant runs the risk of cross-examination about any previous convictions that he may have.

In *R.* v. *Samuel* (*The Times*, January 23) the Court of Criminal Appeal dismissed an appeal against conviction where the appellant submitted that at his trial he was wrongly cross-examined as to his previous convictions. The charge was stealing by finding, and the appellant had introduced evidence to show that on previous occasions when he had found property he had restored it. On his behalf it was argued that this was not evidence of good character such as to permit cross-examination about his convictions.

The Court of Criminal Appeal held the cross-examination was rightly allowed. In the course of the judgment the Lord Chief Justice pointed to the object of the evidence which was to induce the jury to think that the appellant was a man who returned property he found and was an honest man. This entitled the prosecution to say that on other occasions he had been dishonest with property.

Simple Larceny

In answering a question at p. 467 of last year's volume, we said that not more should be read into the case of *R.* v. *Bryant* [1955] 2 All E.R. 406 than was actually decided. It had been suggested to us more than once that the effect of that decision was that offences of simple larceny, which had in fact been tried summarily by consent for 70 years and more, were not so triable. We declined to accept such a view, and we are glad to find that we were right, as is shown by a pronouncement by the Lord Chief Justice in the Court of Criminal Appeal (*The Times*, January 23).

Lord Goddard said the Court understood that the case had caused some difficulty to clerks to justices and those who had to prepare charges and indictments. His lordship again referred to the fact that simple larceny was and always had been a common law offence, but added that the Court did not say nor did they intend to say that in civilian Courts the addition of the words " contrary to s. 2 of the Larceny Act " was improper, though if all that was intended was to charge a simple and not a compound or aggravated larceny those words were in truth surplusages. At the same time it was unobjectionable and indeed convenient to refer to s. 2 where a simple charge of larceny was preferred, as it served to direct the attention of the Court to the fact that the charge was not one of compound or

aggravated larceny and to the punishment which the offence carried. The reference in sch. 1 of the Magistrates' Courts Act to s. 2 of the Larceny Act, 1916, must be taken to mean that a larceny for which no special punishment was provided was one of the offences which could be dealt with summarily.

Jurisdiction of Examining Justices

A correspondent, to whom we are indebted, has called our attention to the fact that the brevity of our answer to P.P. 4 at 120 J.P.N. 33, may give rise to some misunderstanding. We were considering the question solely from the point of view of the jurisdiction of the justices at X to hear the case, and our answer was not concerned with the method of B's being brought before them.

It might well be that B, being temporarily in X, would be interviewed by the police there and the police might decide to charge him. We see no reason why they should not do so, and if they did they would be entitled to take him before the court at X. That court would have jurisdiction under s. 2 (3) of the Magistrates' Courts Act, 1952. It is to be noted that that subsection does not contain the limiting words which appear in s. 11 (1) of the Criminal Justice Act, 1948, from which s. 2 (3) is derived. Moreover, on committal for trial, B would be protected from undue hardship by the provisions of s. 9 (2) of the 1952 Act.

We fully agree with our correspondent that if the police wish to apply for process in respect of this offence they are bound by the provisions of s. 1 of the 1952 Act and that the justices at X cannot issue process unless the matter can be brought within their juridsiction under s. 1 (2). The only possible heading appears to be s. 1 (2) (*c*) which could operate if at any time it could be shown that B was, for the time being, in X.

The question gives no information which would help to decide if it would be likely to cause undue hardship to B to take him before a court there.

Costs of Prosecutions

The decision of a metropolitan stipendiary magistrate not to make an order for the payment of the costs of a prosecution for an indictable offence out of local funds has given rise to some discussion about the general practice. The learned magistrate was reported as basing his refusal on the ground that the prosecution was by a rich company and needed not to be paid for out of the pocket of the taxpayer, the legislation having been intended for the benefit of persons of poor financial resources. The prosecuting solicitor said that this was not in accord with the usual practice of the magistrates' courts.

There is nothing in the Costs in Criminal Cases Act, 1952, nor was there anything in the Act of 1908, to suggest that certificates should be granted or refused according to the means of the prosecutor, and we believe it is customary to grant a certificate for the expenses, including those for legal representation, in the majority of cases, in which the court considers the expenses were properly incurred. The view is taken that there is a public duty to prosecute, and that the prosecutor should not be out of pocket through performing that duty.

It must be admitted that the court has a discretion but the question remains whether it is properly exercised. An instance of the exercise of such a discretion on very different grounds, by a court of quarter sessions, was *R.* v. *Ely Justices, ex parte Mann* (1928) 93 J.P. 45. In that case a rule *nisi* for *mandamus* was granted against the justices in quarter sessions, the rule being subsequently discharged. It appears, therefore, that a prosecutor who might wish to test the validity of a refusal to grant a certificate as being based on a wrong principle may apply to the High Court.

The Witness who Won't Sign his Deposition

We wonder whether any of our readers have had to consider what power, if any, examining justices have to enforce the provision of r. 5 (1) of the Magistrates' Courts Rules, 1952, which states that they "shall cause the witness to sign the deposition." The rules provide no sanction, and there is no express provision in the Magistrates' Courts Act, 1952, corresponding to that in s. 5 (4), which authorizes the committal to custody of a witness who refuses to enter into a recognizance under that section.

Is the matter within s. 54 of the 1952 Act? Does the provision in r. 5 (1) that the justices shall cause the witness to sign his deposition mean that this is a matter in which, by an Act passed after December 31, 1879, "a magistrates' court has power to require the doing of anything other than the payment of money"? To continue, does the requirement to the witness "sign your deposition, please" constitute an order of a magistrates' court within s. 54 (3) or does that subsection refer only to orders made on complaint by the procedure under part II of that Act? We think the latter is probably the correct view, and that Parliament has not provided any sanction by which a court can seek to compel a witness to sign his deposition. This may not matter greatly because in s. 13 (3) of the Criminal Justice Act, 1925, the conditions which have to be satisfied before the deposition of an absent witness can be read on the trial of an accused person do not include one that the deposition shall be signed by the witness.

Indecency in a Churchyard

The title of the Ecclesiastical Courts Jurisdiction Act, 1860, does not seem to suggest criminal proceedings in a magistrates' court, but, as was illustrated by a recent case at Oxford, it does provide for summary proceedings in respect of various criminal offences. Section 2 of the Act refers, *inter alia*, to any person who shall be guilty of riotous, violent or indecent behaviour in places of religious worship, or in any churchyard or burial ground. It deals also with molesting, letting, disturbing, vexing or troubling ministers and others during services. There have been some interesting decisions under this section. The Oxford case, however, was simply a case of indecent behaviour by a man and a woman in a churchyard.

The Modern Pedlar

Since the Pedlars Act was passed in 1871, conditions of trade and transport have changed so strikingly that the application of the Act has produced a number of problems, as well as some curious arguments, such as the submission that a motor car comes within the description of "horse or other beast of burden."

Several recent cases in magistrates' courts have concerned men travelling by motor vehicle from the town in which their employers carry on business to another town where they separate and go from door to door soliciting custom.

We have received particulars of a case that came before the recorder at Bradford, by way of appeal from conviction for having no pedlars' certificate. Counsel for the respondent prosecutor said he had not been able to find any authority on the point. He stated that the appellants were canvassers for a firm of credit drapers, who went to an estate by van and then went round to houses on foot with samples to solicit orders. In counsel's submission, they had to travel and trade on foot, and they came within the legal definition of pedlars.

For the appellants, counsel submitted

that the Act was meant to apply to the pedlars of old who travelled around from town to town on foot, probably with no fixed address, and it was necessary for them to have a licence so that the police could check on them.

The learned recorder dismissed the appeal. The point is of great importance to many trading companies who do business in this way, and it may be that eventually a decision of the High Court will be sought. We can quite understand that canvassers of this kind dislike being called pedlars and being obliged to obtain pedlars' certificates. It is, perhaps, time that the law relating to pedlars and hawkers was overhauled and brought more into line with modern conditions.

Five Out of Six Vehicles Not Roadworthy

The Ministry of Transport and Civil Aviation has issued some details concerning vehicles tested at the Ministry's testing station in Aerodrome Road, Hendon, where free tests are conducted on week-days between 9.30 *a.m.* and 5.30 *p.m.* (Saturdays 9 *a.m.* to 3.30 *p.m.*).

The station was opened on October 11, 1955, and between then and December 31, 6,393 vehicles were tested and 5,322 were found to need attention to headlights, footbrakes, steering or tyres, or to more than one of these items. Eighty *per cent.* of cars had wrongly aimed headlights, about one-third of those being post-1953 cars. This is not a fault which affects the safe handling of the vehicle in question, but it does very much affect the comfort and convenience and, at times, the safety of other drivers.

One in every four private cars tested had one or more faults in the steering, the major trouble being excessive play in the steering mechanism. There were 1,800 steering faults in these cars.

Braking faults numbered 1,551, the points mentioned in the report being brake connexions, and stopping power, and reserve travel, of footbrake.

In 368 cases tyres required attention. Other items mentioned as needing attention were direction indicators (901), windscreen wipers (864), doors and body work (937) and springs (764).

Out of 261 motor cycles tested 114 had one or more major faults, the main offenders being brakes and headlights.

In 113 out of 142 goods vehicles tested the headlights were faulty.

It is stated that many drivers of vehicles which were tested had no suspicion that there was anything wrong with their vehicles. Some had brakes which, under test, failed completely, others had loose steering boxes, and one had its chassis cracked in three places. One man had a leak in his hydraulic braking system and the driver was in the pit watching the test when, under test, the defective pipe burst. He could thus see for himself the risk he was running in driving this car on the road.

We should have liked to see included in the details supplied us figures showing what percentage of vehicles tested were dangerous to drive because of faults such as brakes, steering, etc., and what percentage were condemned because of headlamp faults *only*. The figure given of 4,662 with wrongly aimed headlights does not make it clear how many of this 4,662 had braking and other faults as well. We think that a statement that five out of six vehicles are not roadworthy conjures up in the minds of many people a picture of masses of vehicles with ineffective brakes, loose steering, defective tyres and other faults affecting the driving of the vehicles themselves. It may be all to the good to remind motorists that a vehicle with badly adjusted headlights is not roadworthy in the full sense of the word, but we think a clear distinction should be drawn between this fault and those which make a vehicle unsafe in itself.

Public Co-operation with the Police

The system of law enforcement in this country depends very much for its effectiveness on full co-operation by the law-abiding public in the work of the police. It is disturbing, therefore, to find an experienced police officer (an ex-superintendent and former head of a C.I.D. force) expressing the opinion that feeling about prosecutions for motoring offences is leading to a lack of such co-operation. He is reported as saying that the public seem to think that police constables have nothing better to do than to summon them for minor traffic and parking offences. If this is so then it is very necessary to try to ensure public appreciation of the other point which this officer made, that the police are not responsible for making laws, but only for their enforcement, and that they have a duty so to enforce them, especially when they receive complaints. One motorist wants to park his car and does so. He, looking at the matter only from his point of view, is annoyed when a police officer takes his particulars and a summons results. What he ignores, or perhaps does not trouble to think about, is that a number of other motorists may have had cause to complain because his parked car obstructed their normal progress along the highway, and that on another occasion he might well be one of those complaining of the obstruction caused by someone else's parked car.

There is no perfect answer to this very difficult problem, which would be less difficult if all road users would try to be reasonable and not, at times, most unreasonable in their use of the roads. But one thing is certain, that it is wholly unfair to blame the police for something which they are in no way responsible for.

Post-Nonage Credits

It is commonplace among persons whose income is not known as wages, that wage restraint should be the first measure for combating inflation. Similarly among persons who do not invest their savings through the Stock Exchange, it is well recognized that dividend restriction is the key. Lord Attlee is convinced that £1,000 a year, with certain trimmings, is too little for a member of the House of Commons; the National Union of Teachers that it is too little for the topmost step in basic "salary" of school teachers, though members and teachers alike work fewer days in the year than a Smithfield porter earning the like sum, which according to the Judge of the City of London Court (who seems to have thought £25 a week too much) is what a freelance porter would make if he worked for 50 weeks a year. In other words, each one of us thinks he receives too little money and often is convinced that other people get too much

We are, however, not intending to pursue this topic on the higher economic levels. In January a correspondent of *The Times* suggested that there should be no increases of remuneration except where there was evident underpayment, whereupon another correspondent asked who was to be the judge of what was evident. Our purpose here is to call attention to a rather earlier statement by an experienced headmaster, to the effect that the "Teddy boys," who at the moment are among the stock themes of the journalist, owe their existence largely to inflated wages for juvenile employment. The headmaster seemed inclined to blame the trade unions for this, but the trade union position is defensible. There are many forms of work which can be done more or less adequately by a lad of 16, and if the wages paid to such a lad are further below the wage paid to an adult than is justified by valuing their relevant experience, it is obvious that the employer will be tempted to prefer the juvenile. The efforts made by the trade unions, to ensure that juveniles receive

rewards not too far below what is paid to adults, are parallel to the minimum fee for a barrister's opinion, and to the fare protection given by licensing authorities to certain transport operators, under the Road Traffic Act, 1930. We, therefore, do not think it can be expected or should be desired that juvenile wages be reduced. A solution which might have much to recommend it would be a sort of deferred payment. Would there be any hope, we wonder, of agreement between the large unions and the associations of employers, on the lines that a worker below the age of 18 (for example) should receive part of his weekly wages in the form of a savings certificate rather than in cash? Even if such a scheme were established on a purely voluntary basis as regards the individual worker, with amendment of the Truck Acts (if amendment be found necessary) some good might be done. During the war it became quite ordinary for large employers to buy savings certificates in the names of their employees, and this continues as one of the most useful sources of national savings. There seems no fundamental reason against extending the principle with special reference to juveniles, thus enabling them to put aside money which they do not need at present, against the time when the young man comes out of the forces and the young woman leaves employment upon marriage.

THE LAW OF MURDER AND THE DEATH SENTENCE

The fact that no decision has been announced about action upon the Report of the Royal Commission on Capital Punishment has been the subject of comment in many quarters.

At the annual general meeting of the Society of Labour Lawyers (which includes Sir Hartley Shawcross, Q.C., Sir Frank Soskice, Q.C., and Sir Lynn Lingoed-Thomas, Q.C.) a resolution was passed regretting the refusal of H.M. Government after more than two years, to state whether or not it concurs in the unanimous recommendation of the Royal Commission that the law of murder relating to constructive malice, provocation, suicide pacts, mental deficiency and certain other matters should be amended.

This is no party question as shown by the fact that the subject has been taken up also by the Inns of Court Conservative and Unionist Society. A report, under the title of *Murder*, has been prepared by a committee of the Society including among its members Sir Lionel Heald, Q.C., and other eminent lawyers. This submits the law of murder to close examination and reasoned criticism. It points out what it considers to be anomalies and anachronisms which ought to be remedied, and considers it impossible until this has been done for the public to bring a clear and enlightened moral judgment to bear on the question how far sentence of death is permissible in any circumstances. Until then, it is suggested, a debate on capital punishment cannot profitably be conducted.

This small pamphlet is a valuable contribution to the discussion that is going on about the law of murder and, indirectly, to the discussion on capital punishment which has been much in evidence of late. It is to be hoped that it will be widely circulated and read.

It may be that some of those who hope for the abolition of the death penalty feel that it cannot be achieved in the immediate future. What they wish to do is to persuade the public that abolition is desirable and practicable. That the matter should be widely debated in the light of facts, and that the public should be well-informed is the only way in which a sound public opinion can be formed.

In considering the question of capital punishment it is well to clear our minds of preconceived ideas and to look at the conception of punishment in general. Paley wrote " Punishment is an evil to which the magistrate resorts only from its being necessary to the prevention of a greater," and again " The proper end of human punishment is not the satisfaction of justice, but the prevention of crimes." Blackstone wrote " Though the end of punishment is to deter men from offending, it never can follow from thence, that it is lawful to deter them at any rate and by any means; since there may be unlawful methods of enforcing obedience even to the justest laws." He also wrote, " To shed the blood of our fellow creature is a matter that requires the greatest deliberation and the fullest conviction of our own authority."

Both Paley and Blackstone wrote at a time when death was the punishment for a large number of offences, and it is not suggested that they were opponents of capital punishment. The point is that in their day they were weighed down by the responsibility attaching to its imposition. Today the question is being asked whether under present conditions its retention is indispensable.

In favour of retention it is argued that the fear of death is, and must be, the greatest possible deterrent. That it is a deterrent to some potential murderers is without doubt true. It is equally true that there are many who, to all appearances, are as reckless about their own fate as they are about committing crimes. Criminals who are prepared to " shoot their way out " often appear quite callous and indifferent in this respect. Most of the criminals who plan offences with great deliberation count on not being detected at all. How many really take into account the possibility of conviction and sentence of death is purely a matter of conjecture. We do know, of course, that some criminals have attributed their abstention from violence and the use of firearms to the fear of being led into murder and having to hang for it. It is probably true that the police, speaking generally, regard capital punishment for murder as a measure of protection of which they would not wish to be deprived. These are serious points, which advocates of abolition must be prepared to answer.

Those who favour abolition argue that though the death penalty is a deterrent it has not been proved to be the most effective deterrent. Some men would dread a life sentence more than sudden death, if we may judge from the instances of men who used to ask for death rather than transportation. The truth is that we can rarely know what a potential murderer, if he thinks about it at all, fears most. What we do know is what has happened in countries where capital punishment has been abolished. It has been asserted over and over again, and as far as we know without its having been disproved, that there has been no increase in murder and other crimes of violence in countries in which the death sentence has either been abolished by law or fallen into disuse. If this is indeed the fact it is a strong argument against the retention of a penalty which most people would like to see disappear if there were no danger in its abolition. It is not irrelevant to recall the opposition to the abolition to the death penalty for small thefts which occurred in the early nineteenth century and the warning by Lord Ellenborough, C.J.,

that no man would dare to leave his house for fear that all his property would be stolen. Lord Eldon, L.C., it is recorded, wept upon the Woolsack when a Bill was passed to declare that some petty forms of larceny should no longer be capital offences.

It is not necessary here to emphasize the evil effects of sensational accounts in certain sections of the press of trials for murder which are often invested with a sort of romance and which, after the conviction, profess to tell the story of the murderer's life. There would be far less of this kind of thing if there were no appeal to the emotions of the morbid and the unbalanced that is made by the thought of a man on trial for his life. Even the most interesting criminal cases other than murder rarely receive the same wide publicity.

To many people, however, the most pressing consideration is the possibility that an innocent man may be hanged. It is quite true that every possible means is taken to prevent such a dreadful miscarriage of justice, and that mistakes are rare indeed. Yet no one is infallible and no human institution is perfect, and there are examples, some old and some more recent, where the wrong man has been convicted, even of murder. If a man has been sentenced to imprisonment and is subsequently found to be innocent, some measure of compensation is possible and his character having been cleared, he can be re-habilitated. A death sentence suffered is irrevocable and irremediable.

We have not thought fit here to discuss the religious aspect of the question, though it occupies a foremost place in the minds of many thoughtful people on both sides of the controversy. Our object has been, while recognizing the argument in favour of retention, to put forward some of the arguments against capital punishment which seem to us both strong and reasonable and perhaps to transfer the onus of proving their case upon those who are strongly in favour of retaining the death penalty. They base their case as we understand it, upon what they fear would happen. The abolitionists, if we understand their point of view, rely in no small measure upon what has actually happened in other countries. What we hope is that both sides will state their positions with due respect to one another's opinions and with the object of arriving at a conclusion that is in the best interests of society. The most recent debate in the House of Commons was on that high level.

SOME PROCEEDINGS AT STAFFORDSHIRE QUARTER SESSIONS, 1590-1593 AND 1603-1606

By ERNEST W. PETTIFER, M.A.

In the 11 years 1929-1940 the Staffordshire Record Society (the Society was formerly known as the William Salt Archaeological Society), with the support of the Staffordshire county council, published five volumes of the county quarter sessions papers. Each volume was edited with marked ability by Mr. S. A. H. Burne, barrister-at-law, and it is indeed unfortunate that the first volume is already out of print, for this is the volume which gives Mr. Burne's introduction and background to the whole series. Prolonged inquiries having failed to bring to hand a copy of the missing volume I, the only alternative appeared to be to take one volume from the reign of Elizabeth I and another from the reign of James I and from them to try to build up the story of the work and experiences of the county justices of these early periods.

Volume II, then, covers three years towards the end of the Elizabethan period, and volume V covers the first three years of the Stuart period. The long reign of the great Queen came to its close early in 1603, and on June 21, 1603, the justices of the peace for Staffordshire sat for the first time by virtue of the new Commission of the Peace issued by James. There is no noticeable difference in the preliminaries, procedure or judgments of the court between the two periods.

The learned editor of the Staffordshire volumes was faced with the initial difficulty experienced by several other editors of county quarter sessions records—he had no minute books or order books before him, only a mass of miscellaneous papers. These surviving documents included an almost complete set of the precepts issued by some high officer of State calling upon the sheriff to summon the jurors, constables, justices and others to the sessions. In the period 1590-3, these precepts were usually "tested" by Robert, Earl of Essex, and the list of justices summoned, in addition to the local justices, included an imposing list of State officers—the Chancellor, the Treasurer, the Earl of Shrewsbury, Lord Stafford, Lord Dudley, the Bishop of Coventry and Lichfield, and sometimes two of the "Justices of Pleas before the Queen." Lord Stafford and the Bishop both made their appearances at quarter sessions, but none of the other notables. This non-appearance was not surprising for it was the practice to include the great officers of State in all the commissions of the peace for counties.

The lists of jurors called were exceptionally long. On the average 130 men were summoned to each session, and, in view of the fact that some of the names appear again and again, the burden on some individuals must have been a heavy one. Descendants of some of these jurymen, and, indeed, of some of the justices who sat, are still to be found amongst Staffordshire families of today. In a footnote the editor draws attention to the very interesting fact that Mr. Walter Wrottesley, a very active justice in the 1603-6 period, was of the same family as Mr. Justice Wrottesley, who was chairman of the same quarter sessions in 1940.

In addition to the precepts and panels of jurymen before the editor when he commenced his task of sorting out the piles of documents there were found a number of presentments and indictments, numerous writs and warrants, many recognizances and memoranda of recognizances sent in to the Clerk of the Peace by justices sitting in their own districts, a few letters, and a rather surprising number of petitions sent in by persons or communities pleading for the justices to act in the matter of certain grievances or wrongs. There was little in the way of records of decisions beyond a few notes made by the clerk on a document here and there. The fact that the editor was able to produce five volumes from this rather unpromising material is testimony to his patience, industry and achievement,

The quarterly sessions of the justices were held at Stafford, the county town, but there were undoubtedly other local courts in the intervals between quarter sessions. "Privy sessions" are mentioned as being held at Cannock, Uttoxeter, Abbott's Bromley, Wednesbury, Wolverhampton and Eccleshall. There is one reference only to a "Petty Sessions," held at Haywood in October, 1593, and the five brief documents concerning it which have survived suggest that behind them there was a curious story. Document 1 is a fragment of a precept from Sir Edward Aston, Kt. (he had been high sheriff up to 1591, and was a strong character), and Mr. Richard Bagot, to the sheriff, to summon a jury. Document 2 is a list of the

jurymen, all Haywood men, 17 in all. Documents 3 to 5 appear to be a brief caption, and the depositions of four persons, one of them a surgeon, taken before the two justices, on the information of one Richard Cholmeley, " as to an affray on the highway, viewed from Stafford Grene and Grene Bridge, between Wm. Dudley, Shawe, Walter Lord Stafford, and younge Mr. Stafford, and Cholmeley, Thomas Allen of Stafford, and Samuell a tailor, in which Lord Stafford bydd [bid] kill Cholmeley." Then follows document 6, a presentment, endorsed " true bill " against " (Edward Stafford, esq. late of the par: of Castle) Wm. Duddeley late of Forbridge, yeom. and William Shawe late of Stafforde, glover, with many other malefactors, for array and unlawful assembly at Forbridge, 6th Oct. 35. Eliz. and for assault and battery upon Ric. Cholmeley, gent, there."

And there the story ends! The fact that the name of Edward Stafford is struck out in the presentment and that the name of Lord Stafford, the principal assailant of Mr. Cholmeley is not included (possibly he had claimed trial by his peers), suggests that the two justices thought it politic to send the case forward as an ordinary brawl on the highway in which only Dudley and Shaw had taken part, the vague phrase " many other malefactors " suggesting that there were others but that they had not been identified.

A special sitting by Sir William Chetwynd at his house at Ingestre on June 16, 1605, would have caused much comment had it taken place in the present day. Sir William was sitting to examine one William Jenkins " of St. Thomas, servant to Walter Fowler esq." who was accused of being one of five men (another of whom was also a servant to Mr. Fowler) who had raided Sir William's warren and taken, " with nettes, ferrettes and other ingens " 42 rabbits on January 31, 1605 (four and a half months previously). Today it would be considered hardly correct for a justice to hold a preliminary inquiry into a charge against men for taking rabbits from his own land, but in the sixteenth and seventeenth centuries the justice was deemed the principal protector of all game, not only his own but that of his sovereign and of his neighbours. Sir William would have no doubt that he was entirely in the right in examining the prisoner and committing him for presentment and trial by his brother justices at sessions.

The beginnings of petty sessional courts can be discerned in a number of references to " privy " or " petty " sessions, not only in the Staffordshire documents but also in the records of other counties, but the last decade of the sixteenth century is the earliest period found so far. The necessity for some decentralization of the work of sessions was already being felt, that is clear, and, apparently, two justices in any given district were given the power to issue a precept to the sheriff calling upon him to summon a jury from the particular district only, and the business, also, was limited to specified matters or cases. Nor were the county officials, such as the coroners and high constables, required to attend. It is probable that the daily " wages " of justices sitting at sessions, 4*s*. a day, were paid not only to justices attending the quarterly sessions but also to those who attended intermediate sessions such as the " privy " sessions.

It is impossible from the documents which have been preserved to ascertain with any certainty how many defendants appeared at quarter sessions to answer charges preferred against them. The only persons readily available for trial would be those who had been held as prisoners in the county gaol on committals by local justices. Some of those persons committed to the sessions on bail appear to have duly attended for some of the recognizances bear endorsement by a justice that the sureties had been released from their bonds, but in many cases the presentment put before the grand jury was the first step in a prosecution, and the accused might be in complete ignorance that such a step had been taken. If a true bill was returned, the next step was the issue of a writ or warrant, but in the great majority of such issues the warrants were later returned by the sheriff marked " Not found." Now and then the sheriff's bailiffs would be successful and the fact would be recorded on the warrant, *e.g.* (Easter sessions, 1590), " I have taken William Wright whose body I ought to have before the justices the day and place within named; the rest of the defendants have not been found in my bailiwick."

The note of uncertainty in the words " whose body I ought to have before the justices " is probably explained by the surprising number of rescues from custody which took place at this period, a subject which will be dealt with later.

In the indictments on the file for the Michaelmas sessions of 1590, 28 defendants were named. Twenty of these did not appear, and writs either of *venire facias* or *capias* returnable at the Epiphany sessions were issued. Three were present and pleaded not guilty and as to five there is some uncertainty. From both volumes it is plain that the justices periodically lost patience with many defendants, after repeated attempts had been made to get them before the court, and proceedings for outlawry were commenced. At the Trinity sessions of 1591 there are several entries, given in some detail. The sheriff reported, for instance, on the case of Roger Brace late of Tipton, gentleman, that the offender could not be found and then proceeded to make the following return: " At my county court held at Stafford, 4. Feb., 4. Mar., 1. Ap., 29. Ap., 27. May, 1591, the said Roger Brace was exacted " (or called) " the first, second, third, fourth and fifth times and did not appear." The court then recorded sentence of outlawry in the following words, " Therefore by judgment of (blank) Jarvys and (blank) Jaxson (? Jackson), gents, coroners, he is outlawed." (It is probable that the presence of the coroners would be necessary because outlawry involved forfeiture to the King of the possessions of the outlawed man, and one of the functions of coroners was the enforcement of forfeitures.)

In one case of an individual offender one sheriff had the name called at three successive county courts, and then vacated his office, after making a return of the three calls. The new sheriff punctiliously carried on the statutory procedure, had the defendant called at two more county courts, and then made his own return to the justices.

But, now and then, the justices appear to have cleared their file of outstanding indictments by dealing with large numbers of defendants by one order. At Michaelmas sessions, 1592, 18 men were included in one order, and at the same sessions a further list of 23 offenders, including two women, were named and the 21 men were outlawed while the two women, wives of men who had thus suffered sentence, were " waived." On a further list submitted the same day by the sheriff, 12 men were outlawed and two women " waived."

A first reading of these lists gives the impression that 51 men were placed outside the law on this one day, but a closer examination of the lists of names discloses the fact that eight men are named twice, in different lists. After deducting the eight from the 51, however, a net total of 43 condemned to be fugitives from justice does suggest, at least, that the justices realized their powerlessness to secure the attendance before the court of a large number of offenders, and that they took this last step to warn those who avoided justice that the final results might be loss of their possessions, and destitution for their wives and families. Nor can the justices be accused of over-

haste in finally outlawing these offenders, for some of the men had been named in the calendar at four, five or six sessions, whilst others had been called 10, 11 or 12 times in respect of offences alleged to have been committed one, two or three years before.

Without going through succeeding volumes it is impossible to say how far the sentences became effective, nor whether any of the defendants ended their disobedience by coming before the court. Taking a broad view of the situation in Staffordshire it would seem that very many of the sentences must have remained unenforced for so long that ultimately the offenders resumed their ordinary avocations and home life. The parish constable would know of the sentence, but the general picture of the parish constable suggests that he usually took the line of least resistance, and that he would not interfere. The few bailiffs of the sheriff had their hands very full, and, even if backed by the authority of the coroners, it would be beyond their physical powers to carry out wholesale seizures of goods on behalf of the coroners and, in addition, carry out their ordinary duties of arresting defendants on other warrants, ensuring the attendance of jurors once a quarter, and so forth.

The sheriff's bailiffs seem to have had some rough times in carrying out their duties. There is a surprising number of cases in which bailiffs, sometimes when there were three together, were overpowered by gangs of relatives and friends of arrested men and women. Sometimes they were seriously assaulted. Two bailiffs arrested Robert Tomlyn alias Tomlynson of Perry Bar on September 20, 1590, "to take him to the queen's gaol of the castle of Stafford by virtue of a warrant from the sheriff." They were assailed by six men and a woman who assaulted the bailiffs and rescued Tomlyn. The six men, by the way, subsequently indicted for the assault and rescue, were amongst the 43 men above-mentioned who were outlawed, as was Tomlyn. On May 28, 1591, Wm. Greene, George Hampson, and Richard Hennye, "itinerant bailiffs of Edward Aston, kt, sheriff, by virtue of a warrant from the said sheriff acting on a writ of '*de proclam. et attachiat rebellion*'" (this was a Chancery writ) "arrested Richard Harrison late of Netherton, co. Worcs. nailer, and Arthur Harryson late of Rowley, nailer at Rowley, in order to take them to gaol." The bailiffs were set upon by eight nailers, assaulted, and lost their prisoners. None of the 10 men concerned were ever secured and brought to court, although their names appeared in indictments for the next two years. There were two cases in 1593 in which a single bailiff arrested a man and lost his prisoner in an attack, in each case by the wives, sons and daughters of the arrested men. Turning to the next reign the picture is very similar. On September 21, 1603, three bailiffs were attacked and their prisoner taken from them at Winnington, by seven persons. In January, 1605, the indictment of the seven persons was still on the file, none of the defendants having appeared at the intervening sessions.

(To be continued.)

THE FOOD HYGIENE REGULATIONS, 1955

The coming into force of the Food Hygiene Regulations, 1955, on January 1, 1956, made under the Food and Drugs Act, 1955, which consolidating Act * came into operation on the same date, is the most important single event in public health legislation since the late War. The provisions go far towards ensuring the observance of cleanly practices in the handling of food; but their objective can really be achieved, of course, only by education and persuasion on the part of local authority inspectors, armed with the threat of prosecution for a breach of the regulations. Their provisions are complicated and are extremely detailed; it is therefore not here our intention to discuss all the requirements in detail, but rather to make a few random observations of general legal interest.

(A) *Application of the regulations*

The regulations are wider in their application than was s. 13 of the Food and Drugs Act, 1938 (regulation of "food rooms"), which they replace. By a complicated system of definitions†, the regulations apply, as to their major requirements, to all food premises; *i.e.*, premises on or from which is carried on a "food business." "Food business" means any trade or business for the purposes of which any person engages in the handling of food, *except* any "agricultural activity," a public warehouse or cold store, a slaughter-house, premises occupied by a wholesaler of raw vegetables and used for that purpose, and storage premises where no "open food" is stored—"open food" is an expression of art, meaning food not contained in a container of such materials and so closed, as to exclude all risk of contamination. "Food" also is defined, being confined to food and drink intended for sale or sold for human consumption, but the term does not here include milk (a dairy where milk only is sold is thus not subject to these regulations, being already subject to the stricter—in some ways—Milk and Dairies Regulations, 1949), live animals, water, etc. "Business" is defined widely, so as to include the undertaking of a canteen, school, club, hospital, etc., whether carried on for profit or not, and by reg. 2 (3), the supply of food otherwise than by sale in the course of a business, is to be deemed to be a sale of that food. No question of any sale, in a strict sense, need therefore be established in the case of such premises as a school canteen, a hospital or a national assistance institution.

(B) *The requirements*

The requirements, so far as food premises (as distinct from stalls—*see* below) are concerned, fall into two groups:

(i) Those enforceable against the *occupier* of food premises, *i.e.*, those relating to the structure of or provision of fixtures at or in the food premises, and those relating to the provision of equipment at the premises (*see* reg. 32). In this class are such requirements as the provision of wash hand basins (equipped with soap, towels and nail-brushes) and sinks, lockers and first-aid equipment, sanitary conveniences and water supply.

(ii) Those enforceable against *any person* engaged in the handling of food. These requirements include a prohibition on spitting and smoking, and requirements to observe simple rules of personal cleanness, and to notify known cases of persons suffering from (or being carriers of) certain infections, especially those likely to cause food poisoning.

Stalls—an expression which includes vehicles—have three regulations specially devoted to them, the first of which consists of simple general requirements, the second applies to meat and fish stalls, and the third to all stalls where open food "for

* Replacing the Food and Drugs (Amendment) Act, 1954, which never came into force.

† Most of these definitions appear also in s. 135 of the 1955 Act.

immediate consumption" (an expression which presumably brings in the "barrow boys" selling apples or pears), and which requires washing facilities (with hot water) to be provided and maintained.

(C) "*Escape*" *clauses*

Means whereby those affected may be able to escape a particular requirement of the regulations, include the following:

(*a*) Arguments based on interpretation of the many somewhat vague standards appearing throughout the regulations. Such expressions as "reasonably practicable," "suitable and sufficient," "risk of contamination," "adequate supply," are capable of more than one interpretation in relation to particular facts. It is suggested that in any such case, the court is entitled to give due weight to the purposes for which the regulations have been made, as these are stated in the enabling statute (s. 13 of the Food and Drugs Act, 1955), to be "for securing the observance of sanitary and cleanly conditions and practices in connexion with the sale of food for human consumption or . . . otherwise for the protection of the public health in connexion with the matters aforesaid." The extent to which the regulations prove to be a success or failure will depend very much on the interpretation put in practice on such expressions as "adequate" and the rest, by sanitary inspectors, local authorities, and the magistrates.

(*b*) Those regulations which may (in the words of the explanatory note) "require alterations to premises or substantial changes in existing practice," will not come into force until July 1, 1956, and in most of these cases the local authority may give a certificate of exemption from compliance with particular (specified) requirements, if they are satisfied that by reason of "restricted accommodation or other special circumstances" (*e.g.*, lack of a piped water supply), it is reasonable to grant such a certificate. An appeal lies to the local magistrates in the event of such a certificate being refused.

(D) *The effect of non-compliance*

In the event of a breach of the regulations, the local authority may prosecute the occupier or the "food handler" (as the case may be) for an offence. In the case of breaches affecting the structure of the premises, no powers are given to the local authority to do the work themselves in default as, for example, under s. 10 of the Housing Act, 1936.

In addition to the (substantial) monetary penalty and/or imprisonment that may be imposed by the magistrates, they may, under s. 14 of the 1955 Act, disqualify, for a period not exceeding two years, the offender from using *those* premises as catering premises; some other person *may* so use them despite such a disqualification, or the offender may carry on a food business elsewhere.

Further, if there is a breach of the regulations (whether or not proceedings are taken), the local authority are entitled (after following the proper procedure of s. 19), to refuse to register or cancel the registration of premises concerned, on an application under s. 16 (under which section premises used for the manufacture and sale of ice-cream, sausages, preserved food, etc., must be registered). Under s. 65 of the 1955 Act, it is provided that the local authority may refuse to grant or renew a licence for premises to be used as a slaughter-house or knacker's yard if regulations made under s. 13 (2) (*a*) or (*b*) are not complied with; the present regulations are made under those provisions, but as they expressly do not apply to slaughter-houses, and knacker's yards (by definition: *see* s. 135 (1)) are concerned only with flesh *not* intended for human consumption, it seems that they are in no way relevant to s. 65.

J.F.G.

PURCHASE BY AGREEMENT: RATES

When a local authority or a public utility undertaking requires land by agreement, and upon obtaining vacant possession hands the land over to contractors to make it ready for some statutory purpose, are rates still payable ?

On the reason of the thing, if a manufacturer (not exercising power under a special Act) buys a house, to adapt for his own residence or to throw into his factory, and upon obtaining vacant possession hands it over to his builders, who busy themselves about it for six months, he is not liable to compensate the rating authority for having taken it out of beneficial occupation for those months. This seems to be parallel to the case we first put: say a body which is not a rating authority, such as a county council, does what the private person could have done. It would be strange if Parliament had put them in a worse position than the private purchaser of land or a commercial company which purchases.

However, the question does not turn on merits but on s. 133 of the Lands Clauses Consolidation Act, 1845, where this is applicable. The textbooks dealing specifically with compulsory purchase do not seem aware of the question whether s. 133 applies upon a purchase by agreement, but *Lumley's* note on s. 133 says this is doubtful, citing *Barony Parish Council* v. *Glasgow School Board* (1896) 23 R. (Court of Session) 221. In that case the Scottish enactment corresponding to s. 133 was held not to apply where the school board had purchased land by agreement under a power in that behalf contained in the Education Acts, the place of which is now (in England) taken by s. 157 of the Local Government Act, 1933. The considered judgment of the Court of Session was unanimous and we should expect it to be followed in England, upon statutes to the same effect. Unfortunately the English law must be distinguished. The (Scottish) Education Acts, 1872 and 1878, which came before the Court of Session, were involved. Section 37 of the former provided for the acquisition of land by agreement, as does s. 157 of the Local Government Act, 1933. Section 31 of the Act of 1878 gave a power of compulsory requisition, as is done by s. 159 of the Act of 1933, as since extended, but the compulsory acquisition of land under the Scottish Act was to be by means of a provisional order confirmed by Parliament. The section declared that the Education Acts of 1872 and 1878 together with the confirming Act (in each separate case) should be deemed the special Act for purposes of the Lands Clauses Consolidation (Scotland) Act, 1845. The sheriff substitute held that s. 127 of the last named Act, which corresponds to s. 133 of the English Act, could operate even in the absence of a special Act, the intention of Parliament being to secure the making good of the deficit. He thought the provision about a special Act was merely machinery, and could be ignored where (as on a purchase by agreement under the Act of 1872) there was no special Act.

The Lord President said no to this; the provision about a special Act occurred in the section giving compulsory powers, and where such powers were not used the Act of 1845 did not come into the picture at all, and there was no special Act.

Lord M'Laren said: "It is not said in the record that . . . the powers of the Lands Clauses Act applicable to voluntary purchases ever were put into operation. The Education Act gives power . . . to acquire lands by voluntary purchase without any reference whatever to the machinery of the Lands Clauses Act . . . We are altogether outside this s. 127." Lord Kinnear said: "The school board have become possessed of land but not by virtue of the Lands Clauses Act, because that

has not yet been brought into operation, nor by virtue of any special Act or Act incorporated therewith, because the special Act has not yet come into existence."

Upon examining these judgments, which show the reason of the Scottish decision, we are driven to the conclusion that that decision does not apply to voluntary purchases under the Local Government Act, 1933. The powers of purchase by agreement and of compulsory purchase are separated, as they were in the Scottish Acts above mentioned, but s. 176 expressly applies certain sections of the Lands Clauses Acts, which include s. 133 of the Act of 1845, to purchases by agreement, and declares that for the purpose of those Acts the Act of 1933 is to be deemed the special Act.

MISCELLANEOUS INFORMATION

NATIONAL ASSISTANCE

The National Assistance (Determination of Need) Amendment Regulations, 1955, amend the previous regulations under which the officers of the National Assistance Board determine whether a person is in need of assistance and, if so, how much assistance should be granted. The rates were increased from January 23, by 4*s.* to 67*s.* for a husband and wife; by 2*s.* 6*d.* to 40*s.* for a person who is living alone, or is a householder and, as such, is directly responsible for rent and household necessaries; by 2*s.* 6*d.* to 36*s.* for any other person aged 21 years or over; and to 29*s.* if aged 18 years or over but less than 21 years. The rates for younger children vary according to age from 13*s.* to 18*s.*, and give increases of 1*s.* As under the previous regulations, higher scales are provided for blind persons and persons who have suffered a loss of income in order to undergo treatment for tuberculosis of the lungs. The scale rates are exclusive of rent. It is the practice to give an additional allowance to enable the full rent to be paid by a recipient of assistance unless the rent is clearly excessive or accommodation is shared by a person who is not receiving assistance. The regulations also do not affect the power of the board's officers to make special discretionary allowances for such needs as special nourishment, laundry charges and domestic help. Last year, 642,000 persons were receiving discretionary allowances.

LOTTERIES AND GAMING

The question of lotteries was debated in the House of Commons on November 25, 1955, on the second reading of the Small Lotteries and Gaming Bill, which Mr. Ernest Davies introduced as a private Bill. He said the laws on betting, lotteries and gaming are so complex and confusing and so unequal in their incidence that the law is wholly out of line with public opinion and common practice. In commending the Bill, he pointed out that the present laws date back to the reign of Henry VIII but it was not until 1934 that certain small and private lotteries were dealt with following the recommendations made by the Royal Commission on Lotteries and Betting of 1932–33. The Betting and Lotteries Act, 1934, permitted raffles to take place and allowed societies to run sweep-stakes and lotteries for their own members although they could not sell tickets through the post or to the public. The intention of this was to enable societies to raise funds for charitable objects or other purposes connected with the society. It was the decision in *Maynard* v. *Williams* (1954) which declared certain lotteries such as those run by sports clubs to be illegal. Many football clubs and county cricket clubs have resorted to pools. The object of the Bill is to enable small or large societies to run small lotteries to assist the objects for which the societies were established. Not more than 10,000 tickets could be sold and the maximum price of the ticket would be 1*s.*, so £500 would be the maximum size of the lottery. Five *per cent.* would be allowed for expenses and the balance could be distributed to the extent of 50 *per cent.* in prize money and the remainder would go to the objects of the society. The maximum prize would be £100. The Bill would also legalize small card games which, unless they are games of skill, are illegal for playing in a common gaming house. This may be in a club or anywhere where games are played in public for stakes. Another provision would legalize whist drives; subject to a maximum charge to players.

WARWICKSHIRE FINANCES, 1954/55

The population of Warwickshire continues to grow: the figure for mid-1954 of 509,000 representing an increase of 10,000 over the corresponding 1953 figure. Rateable value is growing steadily also, reflecting the prosperity of this active Midland area, and at April 1, 1954, totalled £3¼ million, equal to £7 0*s.* 4*d.* per head of population. These figures, and other vital information, are given in the financial statement prepared by County Treasurer S. W. Davey, F.S.A.A.

Expenditure on services continues to increase: the 1954/55 total of £7¼ million (£4¾ million for education) was another record and represented an increase of 10 *per cent.* over the previous year. Just over half of total expenditure is met from government grants and just over a third from rates (the levy was 17*s.* 0½*d.* for the year). The new valuation increases the level of assessments in the county on the average by 79 *per cent.* as compared with the overall increase for England and Wales of 72 *per cent.*

Warwickshire has administered its smallholdings estates of 6,400 acres so well that up to the present the service has occasioned no charge to the rates. At March 31, last, a credit balance of £4,600 was held.

The county council administer a substantial capital fund of £257,000, consisting of monies received under financial adjustments consequent upon boundary alterations and from the sale of capital assets. The fund is utilized for borrowings by the council and for making advances to parish councils and other local bodies.

Most county councils now have archivists on their staffs: Warwick is unusual in maintaining a museum also. The two activities cost close on £9,000, divided between museum and records in almost equal proportions.

The county library service does not extend to the non-county boroughs which are autonomous areas. It thus caters for a population of about 211,000 at a cost in 1954/55 of £47,000. Gross expenditure per 1,000 of population was given in a national return for 1953/54 as £205, compared with an average of £184 for all counties.

We are interested to see that during the year 281,000 motor taxation licences were issued, producing revenue of £976,000. The increasing congestion of the roads is vividly illustrated when it is realized that the comparable figures for just 12 months previous were 252,000.

In 1954/55 Ministry of Transport grants for maintenance and improvement of the roads, including payments for trunk roads, were less than two-thirds of the amount paid in direct taxation, without taking any account of the petrol tax or purchase tax.

The police force had an authorized strength at March 31 of 539 men and 16 women: we wonder how much of their time was occupied by traffic duties and whether it would not be more economical to establish a body of traffic controllers separate from the normal police force to undertake this work. Incidentally, in addition to those on the active list, Warwick is also paying pensions to 319 ex-policemen and their widows.

LIAISON IN THE HEALTH SERVICE

There was a useful leading article in a recent issue of the *Lancet* referring to experiments of liaison in the health and hospital services. It is pointed out that the Act of 1946 did nothing initially to break down the barriers between the three branches of the profession but in some directions made the barriers more formidable. The widening of the responsibility of the health visitor also had important repercussions which affected in many ways the local authority's relations with general practitioners and hospitals. Recently, in liaison between the public health department, the family doctor and the hospital staff there has been a gradual improvement though, according to the article, there are big differences throughout the country. That these improvements could be carried further is evident from the frequency with which the words " co-operation " and " liaison " are used in ministerial speeches, official circulars and articles in the medical and lay press. In some respects the bonds between hospital and local authority have been tightened since 1948 largely as a result of regular visits by health visitors and clinic doctors to special departments but it is urged that better co-ordination of effort is conspicuously needed in tackling the growing problem of the aged and, in this, the local health authority has a big responsibility. It is suggested that it is by constructive efforts that the obstacles to a really united health service will be removed but that the deliberations of liaison committees and the advice of official circulars can be useful helps. The success of the National Health Service depends in the end not on committees and circulars but on the spirit of those who do its everyday work. The view is expressed that this spirit is becoming more original and adventurous.

SOUTHAMPTON PERSONAL SERVICES PANEL

It is sometimes suggested that the various departments of a local authority are so circumscribed that full advantage is not taken of their various resources when dealing with a case requiring some form of personal service. In an attempt to deal with this matter the county borough council of Southampton has set up a panel under the

chairmanship of the medical officer of health consisting of the chief officers concerned with the provision of accommodation for old people, handicapped persons and problem families. After obtaining the advice of the officer particularly concerned such as the housing manager, the children's officer, the chief sanitary inspector or the superintendent health visitor, the panel is authorized to decide as to the accommodation to be offered to a person without reference to any committee of the council. The panel will have the advice of a geriatric consultant in surveying the needs of old people in the city.

KEEPING THE COUNTRYSIDE TIDY

Anything that can be done to keep the countryside tidy and to combat the litter nuisance is worth while. One way is by the prosecution of offenders but it is generally difficult to obtain evidence which would secure conviction. Another way is through educating school children, and more can be done in this direction. A good example of what can be done in a further way is in Suffolk where the rural community council organizes annually a competition for the best kept village. The Cosford rural district council, in whose area was the winner of the 1954 competition, have decided to stimulate interest in the idea of the competition and to help to promote a tidier countryside by awarding a perpetual trophy to the village in their district scoring the highest marks in the county competition. The trophy, which has been subscribed for by the members of the council, is in the form of a village sign with a centre plaque illustrating the symbols of the countryside, *viz.*, an oak tree, a windmill, a plough and a sheaf of corn. It is to be hoped that the publicity given to this scheme in *Rural District Review* will induce other rural district councils to take similar action and also that other rural community councils will profit by the Suffolk scheme.

WELFARE OF THE DEAF

It is only in recent years that special attention has been given in this country to the needs of the deaf and apparently much more is being done for them in some part of the United States, according to an address given by Mr. R. Stavers Oloman, M.B.E., J.P., at the recent half-yearly conference of the North Regional Association for the Deaf. Mr. Oloman said he had visited a number of schools for the deaf in the United States and also clubs which were run mainly by deaf people themselves. Deaf children were educated up to a much higher age than in this country and most of them attend school up to the age of 20. Many then go on to college or university. Many of the teachers are deaf. He had been amazed at the large number of deaf people who held high posts in industry and commerce, from which he deduced that there was a different approach by employers to the employment of deaf persons than in this country. At the same conference an address was given by Mr. Pierre Gorman, B.Ed., himself a deaf man. He said a deaf child may be taken into a special school for the deaf from the age of two to 16 years, with the danger that this special and individual attention might produce a person who was not prepared for the struggle of modern society. He was sure too much help could tend to make a deaf child lose independence. The public often subscribed generously for welfare work among the deaf but he thought there was a danger in appealing to the sentiment of people in this way and particularly when the deaf are referred to as the " deaf and dumb." This was a wrong approach because most of the deaf are able to speak though sometimes to a limited degree. He referred to the valuable efforts of the association to widen the circle of people who were able to converse with the deaf and hard-of-hearing; and urged that everything possible should be done to make deaf people feel that they should take part in the general life of the community and not be segregated amongst themselves.

REPORT OF REGISTRAR OF FRIENDLY SOCIETIES

The report of the Chief Registrar of Friendly Societies for 1954, shows that during the year interest was maintained in the movement for housing societies to provide houses for members by their own co-operative labour, and considerable progress was made with these schemes. It is usual for the shareholding of the members of a safe self-built society to be purely nominal, any capital required being raised as unsecured loan stock. A number of the more recently registered societies are building for eventual ownership by the members. On completion of the scheme the mortgages, usually from a building society, are transferred to the individual members and the housing society is then dissolved. The report also refers to charitable housing societies formed exclusively to provide accommodation for old people, of which there were 104 at the end of the year, and 29 others provided some accommodation specifically for old people.

THE SENILE IN THE UNITED STATES

The question of the certification of the senile is giving concern in the United States. Many elderly patients are in mentals hospitals and questions are being asked as to whether they are being cared for satisfactorily and whether they should be accommodated in special hospitals and homes. Aged people are being certified merely because they cannot remain in their own homes and there is nowhere else for them to go. In some mental hospitals a careful study is being made of every patient aged 60 or over with a view to selecting those who could be cared for in a less restricted environment. As to other types of accommodation the Aged Welfare and Health Council of New York has stated that although homes for the aged and nursing homes are not licensed to care for persons diagnosed as " mentally ill " yet they are all caring for a large number of patients known to be senile, with unusual behaviour symptoms, often without the advantages of psychiatric diagnosis or care.

In an article by Justice Walter R. Hart of the New York Supreme Court, in a recently published report, he agreed that there were in mental hospitals some who were classified as " dotards " who, by American law, are persons suffering from the infirmities of advanced years but are not mentally ill. He said that he had examined many patients brought before him by doctors and that he always asked whether in the opinion of the doctor the person was mentally ill. Sometimes the doctor said " No, but there was nowhere but a mental hospital where he could be properly looked after." Justice Hart feels strongly that there is no justification for certifying a person who is not mentally ill so as to give him a home. He personally always refused to do so. He said there were patients in mental hospitals who were ready for discharge and there was nowhere to send them. The Judge said, that in refusing to certify a person who was not mentally ill he had to have courage as a layman to overrule the doctors, or to have the persuasiveness to induce the doctors to concede that the patient was not mentally ill and the he was being certified merely because the department of welfare had no place for him. In conclusion, Justice Hart said men were brought before him with intelligence; he hoped he would have their mental capacity when he reached their age and yet they are characterized as mentally ill because the children have given them up and the daughter-in-law or the son-in-law did not want them and it was easy to dump them in a mental hospital.

OMNIBUS SHELTERS

The Local Government (Miscellaneous Provisions) Act, 1953 empowers local authorities, including parish councils, to provide and maintain bus shelters on highways or on land abutting on highways. Local authorities are also enabled to enter into agreements for the provision and maintenance of shelters with transport operators or other local authorities. Such agreements may provide for contributions towards the cost. Before providing a shelter the local authority may have to obtain the consent of a highway authority, or a bridge authority, and sometimes of the owner of land abutting on a highway as specified in s. 5 (1) of the Act. In considering the siting of shelters all possible care must be taken to avoid obstructive access to cables, pipes, hydrants and other apparatus.

This is a matter on which rural district councils are particularly interested as it is on exposed country roads where shelters are needed. There is often a suitable grass verge on which the shelter can be erected but sometimes this may not be wide enough and then the only site is in an adjoining field. The question may then arise as to whether the owner of the land can claim rent for the use of the site. According to *Rural District Review* this point was put by a rural district council to the Ministry of Transport and Civil Aviation which replied that the Minister is interested in this question in his capacity as a highway authority. It was stated that the Minister is advised that if a local authority act in accordance with ss. 4 and 5 of the Act they are entitled to erect omnibus shelters and are under liability to no one, provided the authority have acted reasonably and sensibly in their manner of erecting the shelters. In this connexion reference is made to *Geddis* v. *Proprietor of Bann Reservoir* (1878) 3 App. Cas. 430, where it was said, "while it is thoroughly well established that no action would lie for doing that which the legislature has authorized, if it be done without negligence, although it does occasion damage to someone . . . an action does lie for doing that which the legislature has authorized, if it be done negligently." Based on this advice the Minister considers that, in general, a local authority has no liability to pay an annual acknowledgment rental to the owner of the land adjoining a highway in respect of omnibus shelters erected under the provisions of the Act of 1953.

EMERGENCY LEGISLATION

The Supplies and Services (Transitional Powers) Act, 1955, and the Defence Regulations kept in force by that Act would have come to an end at the end of December unless continued by Orders in Council. This also applies to certain Defence Regulations which, having been originally kept in force until December 10, 1950, under the Emergency Laws (Transitional Provisions) Act, 1946, and the Emergency Laws

(Miscellaneous Provisions) Act, 1947, have thereafter been kept in force by annual Emergency Laws (Continuance) Orders and also to a few other statutory provisions. These various regulations and provisions have been again extended. The Defence (Sale of Food) Regulations will be revoked when the Food and Drugs (Amendment) Act, 1954, is brought into force. It was explained in a White Paper presented to Parliament by the Secretary of State for the Home Department that there are about 24 other regulations which represent the residue left over after the abandonment in 1954 of all the powers the continuance of which was no longer essential. The revocation of many of these regulations depends on the speed at which they can be superseded by legislation of a more permanent nature. For instance, the scope of reg. 51 has been narrowed by s. 14 of the Requisitioned Houses and Housing (Amendment) Act, 1955, which provides that the regulation should cease to have effect so far as it enabled the Minister of Housing and Local Government to take possession of land with a view to its use for housing purposes. The previous legislation has been continued for one year, which will have the effect of keeping in force 25 Defence (General) Regulations, including those relating to power to do work on land; powers as to water; taking possession of land; price control of goods and services; control of employment; control of cultivation and determination of agricultural tenancies; restrictions on disclosing information; and entry upon and inspection of land.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Hilbery and Stable, JJ.)

PRACTICE POINT

January 23, 1956

Larceny—Indictment—Larceny Act, 1916 (6 *and* 7 *Geo.* 5, *c.* 50), *s.* 2.

LORD GODDARD, C.J., referring to *R.* v. *Bryant* ([1955] 2 All E.R. 406), a case in the Courts-Martial Appeals Court, said that in that case the court did not say, nor did they intend to say, that in civilian courts the addition of the words "contrary to s. 2 of the Larceny Act, 1916" in the statement of offence in an indictment for larceny was improper. If all that was intended was to charge a simple, and not a compound or aggravated, larceny, those words were, in truth, surplusage, but it was unobjectionable, and, indeed, convenient, to refer to s. 2 where a charge of simple larceny was preferred, as it served to direct the attention of the court to the fact that the charge was not one of compound or aggravated larceny and to the punishment which the offence carried. A reference to the section did not make the indictment bad; equally, if the indictment charged larceny contrary to the common law, it would be good; but the sentence could not exceed five years even if the evidence disclosed a compound larceny.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Stable and Ashworth, JJ.)

PARSON *v.* TOMLIN

January 19, 1956

Road Traffic—Dangerous driving—Wife of defendant as witness for prosecution—Competency—Evidence of police officer as to amount of traffic generally to be found on road—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 11.

CASE STATED by Buckinghamshire justices.

At Aylesbury magistrates' court an information was preferred by the respondent, William Tomlin, a police officer, charging the appellant, Herbert Angel Parson, with driving at a speed which was dangerous to the public on Wendover Road, Aylesbury, contrary to s. 11 of the Road Traffic Act, 1930. According to the facts found by the justices, the appellant was driving his car on the road in question, which was a road in the environs of Aylesbury bordered on both sides by houses with small drives, at a speed of practically 70 miles an hour on a Sunday afternoon. The appellant's wife was called as a witness for the prosecution, although objection was taken on behalf of the appellant to the admissibility of her evidence, but she did not give any material evidence. After objections by the defence had been overruled, a police officer gave evidence for the prosecution that he had known the road for three years and that on the day in question he estimated the number of vehicles passing in both directions to amount to 90 per hour, and that on a Sunday in July he had checked the flow of traffic at the same place, when 192 vehicles an hour had passed. The justices convicted and fined the appellant, who appealed.

Held, (i) that the appellant's wife was not a competent witness, and that the court would have been bound to quash the conviction if her evidence had been of any importance, but that, as it was not, the court would not interfere; (ii) that the evidence of the police officer was rightly admitted, as it was relevant to the issue of the amount of traffic which might reasonably be expected to be on the road, which, by the terms of s. 11, was one of the circumstances which the court had to take into account. The appeal, therefore, must be dismissed.

Counsel: *Ryder Richardson, Q.C.*, and *Beldam* for the appellant; *J. C. Lawrence* for the respondent.

Solicitors: *A. D. Vandamm & Co.*; *Sharpe, Pritchard & Co.*, for *R. E. Millard*, Aylesbury.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PERSONALIA

Mr. Ramsay Lawton has been appointed whole-time clerk to the justices for the Wrekin, Salop, petty sessional division to fill the vacancy caused by the death of Mr. R. D. Newill, the late part-time clerk to the justices. Mr. Lawton, who is 36 years of age, is at present deputy clerk to the Oxford city justices and formerly held appointments in connexion with the administration of justice in Nottinghamshire and the West Riding of Yorkshire. He will take up his appointment on March 1, next.

Mr. R. H. Moon has been appointed assistant solicitor to the city and county of Bristol. Aged 25, Mr. Moon was articled to Mr. P. W. Setchell of Bristol and later to the town clerk of Bristol, being admitted in October, 1953. Mr. Moon returned to the town clerk's office in July, 1955, after National Service, as junior assistant solicitor. His present appointment was received in November.

Mr. A. N. Bullough, D.P.A. (Lond.), has been appointed deputy clerk to Bishop's Stortford, Herts., urban district council, in succession to Mr. Richard Shakesby who has been appointed chief financial officer to the council. Mr. Bullough is at present the deputy clerk to Wilmslow, Cheshire, urban district council and was previously with Westhoughton, Lancs., urban district council.

Dr. W. H. Morgan has been appointed coroner for East Glamorgan.

Mr. Keith Alexander Miller, assistant official receiver for the bankruptcy district of the county courts of Bristol, Bridgwater, Cheltenham, Frome, Gloucester, Swindon and Wells, has been appointed official receiver at Sheffield.

Mr. Herman Rutherford, the present chief constable of Lincolnshire, has been appointed chief constable of Surrey to succeed Mr. J. Simpson, O.B.E., who has been appointed an assistant commissioner of the

metropolitan police. Prior to his appointment as chief constable of Lincolnshire in July, 1954, Mr. Rutherford had, since October, 1945, been chief constable of Oxfordshire, and prior to that had served with the metropolitan police since 1930. He is 47 years of age.

RESIGNATION

Mr. D. W. Muggeridge has resigned as deputy clerk to Worthing, Sussex, rural district council, as from April 30, next. Mr. Muggeridge was in the service of Guildford, Surrey, rural district council from 1936 to 1949, filling a number of appointments. He was chief assistant clerk when he left to join Worthing in 1949. Mr. Muggeridge brings to a close 20 years of local government service when he sails for Canada, with his wife, on May 11, next.

OBITUARY

Mr. Charles Stuart Robinson, town clerk of Blackburn, Lancs., has died suddenly at the age of 57. Mr. Robinson served in local government at Wakefield, Yorks., and Norwich before going to Blackburn, where he has been town clerk since 1935. Mr. Robinson's stepson is Mr. Keith Robinson, who is deputy town clerk of Birkenhead, Cheshire.

Dr. A. W. Gardner, deputy coroner for East Sussex for several years, was killed in a car crash recently.

Mr. Arthur James Mansfield, chief clerk to the county courts of Bristol, Weston-super-Mare, Wells and Thornbury, has died.

NOTICES

UNIVERSITY OF LONDON

A lecture on "Parliamentary control of subordinate legislation" will be given by Sir Cecil Carr, K.C.B., Q.C., LL.D., at the London School of Economics and Political Science, Houghton Street, Aldwych, W.C.2., at 5 *p.m.* on Tuesday, February 14, 1956. The chair will be taken by Professor W. A. Robson, B.Sc.(Econ.), LL.M., Ph.D., Professor of Public Administration in the University of London. The lecture is addressed to students of the university and to others interested in the subject. Admission is free, without ticket.

A lecture on "The contribution of the law officers to international law" will be given by the Rt. Hon. Lord McNair, C.B.E., Q.C., LL.D., D.C.L., D.Litt., F.B.A., formerly President of the International Court of Justice, at the London School of Economics and Political Science, Houghton Street, Aldwych, W.C.2, at 5 *p.m.* on Tuesday, February 28, 1956. The chair will be taken by Sir Gerald Fitzmaurice, K.C.M.G., Legal Adviser to the Foreign Office. The lecture is addressed to students of the university and to others interested in the subject. Admission is free, without ticket.

CORRECTION

We are informed that "Road Traffic Law," reviewed on p. 30, *ante*, is now published by the Aberdeen University Press, Ltd., 6 Upper Kirkgate, Aberdeen.

ADDITIONS TO COMMISSIONS

ESSEX COUNTY

William Lake Barker, Buersil, Heronway, Hutton Mount, Brentwood.

Mrs. Bessie Ellen Bottomly, 19, Lichfield Road, Woodford Green.

Mrs. Christina Gifford Broadhead, 32, Repton Gardens, Gidea Park, Romford.

Donald Hedley Pettit Gibson, Chasteyns, Horse & Groom Lane, Halleywood, Chelmsford.

Mrs. Elizabeth Jane Gregory, O.B.E., 112, Bull Road, Basildon.

Lt.-Col. Cecil Vivian Hill, Blue Bridge House, Halstead.

Edward Albert Hillman, 1, Waldegrave Gardens, Upminster.

Mrs. Beryl Marcia Douglas Hughes, Spaynes Hall, Great Yeldham.

Miss Elisabeth Ruth Littlejohn, 146, Felbrigge Road, Goodmayes, Ilford.

Arthur William Mitchell, 104, Castle View Gardens, Ilford.

Edward Taylor Potter, 14, Frimley Road, Ilford.

General Sir Frank Ernest Wallace Simpson, G.B.E., C.B., D.S.C., Warley Elms, Great Warley, Brentwood.

Lt.-Col. Stanley Alfred James Smith, 112, Squirrels Heath Road, Harold Wood, Romford.

Thomas Thornton Streeter, Harps, Great Hallingbury, Bishop's Stortford.

Laurence Edwards Stringer, 56, Quebec Road, Ilford.

Donald Henry Thompson, The Haylands, High Road, Chigwell, Essex.

Stanley Maurice Tucker, Valetta, Sylvan Avenue, Emerson Park, Hornchurch.

Mrs. Kathleen Margaret Welch, The Vicarage, Great Burstead, Billericay.

WESTMORLAND COUNTY

Major Thomas William Hedley, M.B.E., Briery Close, Windermere.

William Edmund Jackson, Wickerslack, Shap, Penrith.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, January 24

SEXUAL OFFENCES BILL, read 1a.

CHILDREN AND YOUNG PERSONS BILL, read 2a.

Tuesday, January 31

SOLICITORS (AMENDMENT) BILL, read 2a.

HOUSE OF COMMONS

Friday, February 3

NATIONAL INSURANCE BILL, read 2a.

PENSIONS (INCREASE) BILL, read 1a.

LOCAL AUTHORITIES (EXPENSES) BILL, read 2a.

GLEANINGS FROM THE PRESS

Evening Standard. January 27, 1956.

WOMAN SWALLOWS £1 NOTE

When a woman, aged 64, *arrested for being drunk and incapable at Camberwell Green, was being searched at Camberwell police station, a pension book, a* £1 *note and* 6d. *were found in her handbag, Police Constable James Lewis said at Lambeth today.*

He added that the woman snatched the £1 *note from the searcher and swallowed it.*

She signs

The magistrate, Mr. Geoffrey Rose, sentenced the woman, Miss Agnes Fewster, of Blackfriars Road, to one day's imprisonment, and said: "If she is not feeling very well she had better go home."

Before leaving the court Miss Fewster signed the charge sheet to say that she still had the £1 *note.*

Apart from the common law right to search a person arrested on a criminal charge in order to preserve evidence, or to prevent the prisoner from doing harm to himself or other, or to prevent his escape from custody, it is common practice for the police to search every prisoner kept in custody, even on a minor summary charge, and to keep everything found on him in safety until the charge has been disposed of.

By s. 39 of the Magistrates' Courts Act, 1952, which has replaced s. 44 of the Summary Jurisdiction Act, 1879, the police must report the taking of the property to the magistrates' court which deals with the case. The section gives power to the court to direct that the property, or any part of it, be returned, if it is of the opinion that it can be done consistently with the interests of justice and the safe custody of the accused. In *R.* v. *D'Eyncourt* (1888) 52 J.P. 628, it was held that that power of the court to order the return of property was limited to the time during which persons were under charge. If the police retain property after the case has been disposed of there is a remedy under the Police Property Act, 1897, under which a magistrates' court may, on application by a police officer or by a claimant to the property make an order for the delivery of the property to the person appearing to the court to be the owner, or, if the owner cannot be ascertained, make such order with respect to the property as to the court may seem meet.

In practice the police report the taking of the property to the court by entering particulars of it on the charge sheet. When the case has been disposed of, and the police return the property, the prisoner signs a receipt for it. Having done what she did the defendant in this case could hardly do otherwise than sign for the £1 note as well as her other property.

Western Daily Press. January 17, 1956.

TANKER SKIPPERS FINED

Fines totalling £1,500 *were imposed by Hythe (Southampton) bench yesterday in two cases in which oil tankers arriving at the Esso refinery, Fawley, were said to be submerged below the load line.*

Guiseppe Ferrara, master of the Italian ship Tenacia, *who was fined* £500 *with* £10 10s. *costs, was stated to have been fined* £1,700 *in* 1954 *and* £295 *last year for similar offences.*

In the second case William Holm, German captain of the Liberian ship World Grace, *was fined* £1,000 *with* £10 10s. *costs.*

These proceedings are under the Merchant Shipping (Safety and Load Line Conventions) Act, 1932, which is to be construed as one with the Merchant Shipping Acts (s. 74). It gives effect to the International Convention for the Safety of Life at Sea, 1929, and the International Load Line Convention, 1930. The Conventions are scheduled to the Act.

The ships in these cases are Italian and Liberian and are "load line ships" and "Load Line Convention ships," as defined by s. 41. Under s. 65, Orders in Council have been made declaring the Load Line Convention to apply to many countries. S.R. & O., 1932, No. 1078 declared the Convention to apply to Italy, and S.R. & O., 1949, No. 1430 to Liberia.

A British load line ship registered in the United Kingdom must not be so loaded as to submerge in salt water, when the ship has no list, the appropriate load line on each side of the ship (s. 44 (1)). If the ship is loaded in contravention of s. 44 the owner or master is liable to a fine not exceeding £100 and to such additional fine not exceeding £100 for every inch or fraction of an inch wrongly submerged as the court thinks fit to impose, having regard to the increased earning capacity of the ship owing to such submersion (subss. (2) and (3)). Without prejudice to proceedings for a penalty, any ship which is loaded in contravention of s. 44 may be detained until she ceases to be so loaded (subs. (5)).

Section 57 applies s. 44 to load line ships not registered in the United Kingdom, while they are in any port in the United Kingdom, but no Load Line Convention ship may be detained and no proceedings may be taken against the owner or master except after inspection by a surveyor.

Daily Herald. January 27, 1956.

COURT ORDERS POLICE TO PAY *HERALD* MAN

A Daily Herald *photographer was awarded* 30 *guineas costs against the police yesterday. Two summonses alleging that he took and attempted to take photographs in Bow Street court were dismissed.*

The photographer, William Jones, of Allington Road, Orpington, Kent, was represented by Mr. Gerald Gardiner, Q.C., and Mr. Hugh Davidson. He pleaded not guilty.

Mr. R. E. Seaton, prosecuting at Bow Street, said that last November Jones photographed Mr. B. Perkoff, a solicitor who was a witness in Bow Street court.

Right Turn

Mr. Perkoff had given evidence for the Crown in the prosecution of people accused of conspiring to defeat the ends of justice.

He was coming out of the court and turned right into Broad-court when Jones took a photograph.

Mr. Seaton said no person should take a photograph in court of persons involved in proceedings, and this order applied to "the precincts of the building in which the court is held."

The Chief Metropolitan Magistrate, Sir Laurence Dunne, said: "The question is what is meant by 'the precincts'."

"Only Fair"

Mr. Seaton: "It is only fair to say what would have happened supposing Mr. Perkoff had turned to the left instead of the right, and the photograph had been taken the same distance away.

"He would have been alongside the Opera House, and I don't think anyone could pretend that was the precincts of the court."

Mr. Perkoff was, in fact, in a public highway.

Sir Laurence said he could not see there was any evidence that this was within the precincts of the court, and dismissed the summonses.

This is a case in which a press photographer was summoned for taking and for attempting to take photographs of a witness, contrary to s. 41 of the Criminal Justice Act, 1925.

Subsection (1) of that section provides that "no person shall (*a*) take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch, of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or (*b*) publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction thereof; and if any person acts in contravention of this section he shall, on summary conviction, be liable in respect of each offence to a fine not exceeding £50."

"Court" is defined in subs. 2 (*a*) to mean any court of justice, including the court of a coroner. "Judge" is defined in subs. 2 (*b*) to include recorder, registrar, magistrate, justice and coroner.

By subs. 2 (*c*) "a photograph, portrait or sketch shall be deemed to be a photograph, portrait or sketch taken or made in court if it is taken or made in the courtroom or in the building or in the precincts of the building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the courtroom or any such building or precincts as aforesaid."

Evidently in this case the learned chief magistrate held that the defendant neither took nor attempted to take a photograph anywhere within subs. 2 (*c*) and that the witness was not leaving the building or precincts, but was in the public highway.

Evening Standard. January 25, 1956.

DIRECTOR IN £60,000 CASE IS TO BE SENT TO U.S.A.

John Maxwell Seaforth Gray, 44, *company director, of Queen's Gardens, Bayswater, was, at Bow Street today, committed in custody for* 15 *days to await an extradition order from the Secretary of State.*

At the last hearing Mr. Frank Whitworth, for New York District Attorney, said that Gray appeared charged "suspected and accused of the commission of grand larceny in New York."

He said that nine cases of larceny and six of forgery, involving a sum getting on for £60,000 *were involved.*

Today it was stated on Gray's behalf that he was anxious to return to the United States to answer the accusations.

This is a case under the Extradition Act, 1870.

Generally speaking all extradition cases must be heard by the chief magistrates or one of the other magistrates of the metropolitan police court in Bow Street (ss. 9 and 26). If the crime was committed at sea on a vessel coming into a British port (s. 16) or if the removal to Bow Street would be dangerous to the life or prejudicial to the health of the accused (s. 1, Extradition Act, 1895) the case may be heard elsewhere.

The accused may be arrested on a provisional warrant, which may be issued by any justice of the peace, who must report its issue to the Secretary of State, or on a warrant issued by a Bow Street magistrate by order of the Secretary of State. In either case the fugitive must be brought up at Bow Street. A fugitive arrested on a provisional warrant must be discharged by the Bow Street magistrate unless he receives, within such reasonable time as he may fix, an order from the Secretary of State signifying that a requisition has been made for the surrender of the fugitive criminal (s. 8).

The reasonable time is often fixed by the Treaty with the requisitioning power. The Treaty also often fixes the time within which sufficient evidence must be produced to justify extradition. The Treaty now in force with the United States of America is dated December 22, 1931. It came into force on June 24, 1935, and is in S.R. & O., 1935, No. 574. Article 11 of the Treaty provides that "if sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the High Contracting Party applied to, or the proper tribunal of such High Contracting Party, shall direct, the fugitive shall be set at liberty."

The magistrate at Bow Street must be satisfied that the crime of which the fugitive is accused is an extradition crime, that is to say that it is a crime described in sch. 1 to the Act and also a crime for which extradition may be reciprocally granted under the Treaty (ss. 5, 10 and 26). Larceny and forgery are in sch. 1 to the Act and are in art. 3 of the Treaty with the United States.

The magistrate "shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England" (s. 9). He must not order the fugutive to be committed if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character (s. 3 (1) and s. 9).

A similar provision appears in art. 6 of the Treaty with the United States.

Depositions taken abroad are admissible in evidence at Bow Street (s. 14) if they are authenticated as provided by s. 15.

The reference to 15 days in the *Evening Standard* report relates to s. 11, under which the magistrate must, if he commits the fugitive to prison, inform him that he will not be surrendered until after the expiration of 15 days, and that he has a right to apply for a writ of *habeas corpus*. Section 11 goes on to provide for the surrender of the fugitive to the foreign State by warrant of the Secretary of State.

The Star report of the case stated that the chief magistrate, Sir Laurence Dunne, said he must make it clear to Gray that he could only be tried on charges for which he had been committed—nine charges of grand larceny and six of forgery. That relates to s. 3 (2) which provides that " a fugitive criminal shall not be surrendered to a foreign State unless provision is made by the law of that State, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions be detained or tried in that foreign State for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded." A provision to that effect appears in art. 6 of the Treaty with the United States.

PIN-UPS AND PURITANS

" There is no such thing as a moral or an immoral book," wrote Oscar Wilde, in *The Picture of Dorian Gray*: " books are well written or badly written." That is a view held by many persons of exemplary social behaviour and refined aesthetic taste. Standards of morality, in every sense of that overworked term, vary from nation to nation and from age to age. The heretic and the rebel of today will be the martyr and the patriot of tomorrow; the " libertine " writers of the eighteen-nineties seem, to the present generation, to be full of platitudinous respectability. On the other hand, the criteria of good writing remain unaltered. Fashions may change, and styles adjust themselves to the times; but the tawdriness and vulgarity of one age can never add up to literature in another. Conversely, it cannot detract from the merit of a literary work, which has survived the touchstone of informed criticism for centuries or decades, that it contains passages which are, for the time being, offensive to the prejudices of ephemeral opinion.

English common and statute law reflect much confusion on this subject in the public mind. The description (it can scarcely be called a definition) of " indecent matter " in *R.* v. *Hicklin* (1868) L.R. 3 Q.B. 360—as " tending to deprave and corrupt those whose minds are open to immoral influences "—is an excellent example of the logical fallacy known as *petitio principii*, or begging the question. Eleven years earlier Lord Campbell's Obscene Publications Bill was attacked and ridiculed by men of the calibre of Brougham and Lyndhurst—each a former Lord Chancellor of England. It was pointed out that the provisions then under debate could be used to suppress almost any literary work, from the *Song of Songs* to the *Canterbury Tales*, and from the plays of Aristophanes to the sonnets of Shakespeare. The *Decameron* was not at the time specifically mentioned; but in the century that has passed since the Bill became law satirical anticipation has been eclipsed by stark reality. There must surely be something wrong with a legal system which lumps together, under the phrase " indecent matter," the literary talent of a Giovanni Boccaccio and the trashy slovenliness of an Elinor Glyn. Admittedly the recent decision of the Swindon bench was concerned with the application of a criminal statute, while *Glyn* v. *Weston Feature Film Co.* [1916] 1 Ch. 261 dealt with a question of copyright; but the basic principles of the two cases are identical.*

The absurdities to which the confusion of ideas may lead is exemplified by recent episodes in places as far apart as Durban and Durham. The customs authorities in South Africa held up, for examination by the censorship board, copies of Anna Sewell's novel *Black Beauty*, the title of which aroused the strong suspicion that it might contain subversive criticism of the Union's racial policies. (The book, as everyone knows, is a sentimental story, beloved of teen-age schoolgirls, about a glossy-coated favourite horse.) Another " doubtful " work submitted to the ignominy of censorship bore the sinister title *Before We Go to Bed*—which turned out to be an anthology of evening prayers for the very young. At the other end of the scale the Durham county education committee has asked the Board of Trade to stop the import of a certain brand of chewing-gum in packets containing coloured pictures of what are called " pin-up girls," of which (it seems) North Country children of tender years have become assiduous collectors. Transatlantic immaturity, which manifests itself in a sniggering, lower-fourth-form attitude to the subject of sex, has become (thanks to the films and the " comics ") so familiar a feature of the English scene that this particular issue seems to have got itself bogged down in the departmental limbo between the Home Office and the Board of Trade—and probably the Foreign Office also, since diplomatic relations with our most powerful ally must not be jeopardized by depriving its retarded adolescents in our midst of their necessary mental sustenance.

The latest manifestation of the problem is in the venerable city of Oxford, where the library committee of the council discontinued the supply to its public reading-rooms of a certain weekly illustrated magazine. Now the city council, by a substantial majority, has declined to request the library committee to reconsider its decision—" unswayed by the presence in the council chamber of a double-page ' pin-up ' in colour of a Swedish film-star." Interesting points of view, well reflecting the confusion inherent in the subject, were put forward in debate. The mayoress (as reported) said she had found the periodical in question in her doctor's waiting room, and added the *non sequitur* that " if a doctor can have it, it is perfectly suitable for the public libraries." She was supported by a male councillor who, objecting to what he called a " censorship of taste," remarked that the lady represented in the photograph is known as " The Swedish Iceberg," and reminded his colleagues that " two-thirds of an iceberg is hidden from view." For this he was taken to task by a stickler for accuracy who corrected " two-thirds " to " seven-eighths ": whether this arithmetical exactitude was intended to be taken literally or symbolically is by no means clear. Another member of the council criticized the magazine for " its rapid alternation between ' succulent popsies ' on one page and oleographs of saints on the next "; this sort of technique is not so extraordinary nowadays, since it is frequently employed by at least one " serious " contemporary playwright, with excellent results in the box-office returns. It may also be said that the association harks back directly to Boccaccio, though we should be sorry to compare the wit, elegance and subtlety of the great Florentine with the crude garishness of present-day practitioners.

Another speaker in the debate referred to the fondness of the periodical in question for " the depiction of attractive ladies in positions which could possibly be described as provocative, and very rarely fully-clothed." Nakedness has its proper place in art, and to adult minds there is nothing indecent about it, as such. Even full-blooded bawdiness, in the hands of a Rabelais or a Brueghel, is neither shocking nor offensive. We say nothing one way or another about the journal which was discussed at Oxford—we are content to leave its quality to the judgment of its readers. But upon the general quality of English newspapers today, we make bold to say that some of them (daily and weekly) seem to specialize in half-hearted pornography, calculated to titillate, without satisfying, the semi-developed erotic instincts of smutty-minded schoolboys of all ages. This, which is normally lacking in literary or artistic merit is commercialized exploitation of a nastier kind than Campbell and Cockburn ever dreamt.

A.L.P.

* The present confusion, legal and popular, was discussed at length in the J.P. & L.G.R. in 1954. The articles were reprinted at a price of 2*s.* under the title " Obscene Publications."—*Ed., J.P. & L.G.R.*

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Fines—*Bankruptcy of defendant—Enforcement.*

A was charged and convicted of evading purchase tax, over a year or more ago, and has paid off about one-third of the amount of the fine. A default summons has been issued against A and is to be heard shortly, but it has now come to my notice that, during the period which has elapsed since the issue of the default summons, A has had a receiving order made against him, thus whatever assets A has, are now frozen in the hands of the official receiver and the only course which seems to be available is to prove in the bankruptcy court, because I do not feel that my magistrates can give him further time to pay and in default will commit him to prison. Will you please confirm that this is the only course which lies open, if not, please advise.

SWELL.

Answer.

The debt can be proved in the bankruptcy, *re Pascoe, Trustee in Bankruptcy* v. *H.M. Treasury* [1944] 1 All E.R. 593. In our opinion, however, this is not the only method of recovery as, so long as the defendant is an undischarged bankrupt he is liable to be imprisoned, subject to the result of the means inquiry. *See* an article at 114 J.P.N. 644.

2.—Housing Act, 1936—*Demolition order—Party wall.*

A demolition order was made by this council and became operative. The owner has signed an authorization requesting the council to demolish the house on his behalf. Section 13 of the Housing Act, 1936, empowers the council in default to enter and demolish the house and recover the cost. The property is the end house of a terrace; when it is demolished, the party wall of the adjoining house will be exposed as an external wall. This wall will not be weatherproof and its stability may be impaired by the removal of any support now given by the house to be demolished.

1. Is the owner of the house subject to the demolition order liable to (*a*) provide support for the adjoining property or (*b*) make the exposed wall weatherproof ?

2. If the demolition is carried out by the council in default, must the council provide such support and/or weatherproofing in conjunction with the demolition works; if so, can the cost of this be recovered from the owner of the demolished house ?

3. If defects arise in the adjoining house during the demolition work by the council, due to the removal of any support which may at present be provided, is the council in any way liable ?

P.C.I.E.T.

1. (*a*) (*b*) It is necessary to distinguish support, which is a recognized easement, from weatherproofing which is not.

2. If the adjoining owner has rights under (1) above, the council must not infringe them. The council step into the owner's shoes: *Bond* v. *Nottingham Corporation* [1940] 2 All E.R. 12; 104 J.P. 219. Costs necessarily incurred by them can be recovered from the owner of the demolished property.

3. Yes, if they arise as the result of demolition and withdrawal of support.

[We may, however, draw attention to what we said at 105 J.P.N. 693; 111 J.P.N. 364; 113 J.P.N. 151, and 113 J.P. 196, suggesting that the council may as public health authority have moral obligations exceeding their strictly legal liability.]

3.—Land—*Compulsory acquisition—Omnibus shelters.*

Local authorities may provide shelters on land abutting on a highway: Local Government (Miscellaneous Provisions) Act, 1953, s. 4 (1). They may, by agreement, acquire land for such shelters: Local Government Act, 1933, s. 157 (1). Can you tell me whether land for the purpose of erecting shelters thereon can be acquired compulsorily; if so, please quote the authority. The Acquisition of Land (Authorisation Procedure) Act, 1946, does not seem to apply.

BUSSING.

Answer.

We do not find any power of compulsory acquisition for this purpose.

4.—Landlord and Tenant.

A is the contractual tenant of a house owned by B, and subject to the Rent Restrictions Acts. The house, which is one of a pair of semi-detached properties in different ownerships, was so damaged by fire as to make it uninhabitable, apart from the garage which is still occupied by A. Repairs have been carried out to the other house of the pair and this is again occupied. It is understood B's house was covered by insurance but A is unable to ascertain the insurers concerned.

A is desirous of returning to the house but B is reluctant to give any information as to when repairs are likely to begin. Appearances suggest that B is delaying the repairs as long as possible, in hopes that A will find permanent accommodation elsewhere, and so enable the repaired property to be sold with vacant possession.

What action if any, can A take in the matter.

PEPPING.

Answer.

Upon the letting of a house of this size there will normally be no covenant that the tenant can enforce in such a case. This being so A can take no action, in our opinion.

5.—Landlord and Tenant—*Woman wrongly believed to be husband's agent—Eviction.*

In October, 1952, the council purported to grant the tenancy of one of their houses to A, the husband of B. The council do not enter into written agreements and, as is often the case, the housing assistant saw only the wife. It was to her that the keys were handed, the rent card with the husband's name endorsed thereon, and the form of receipt for the keys. This latter form she took away and brought back some days later, purporting to be signed by her husband. Since the tenancy was granted the husband has not been seen by the council's rent collectors who have always collected the rent from the wife. The rent books have continued to be issued in the husband's name. In the last few months the rent has got steadily into arrear, and the council are now desirous of determining the tenancy.

Investigations carried out in order to discover the cause of the arrears have brought the following facts to light:

1. That in 1947 the husband and wife were legally separated.

2. That the husband has since January, 1953, been a patient in a mental hospital in another part of England.

3. That the husband was not living with the wife at the time the tenancy purported to have been granted to him, and in fact was not in this town.

4. That a man who is not the husband has been and is living in the house under the husband's name, and probably has been there since the purported tenancy was granted.

Your opinion on the following points is asked for:

1. Whether in view of the legal separation the council can assume that the wife could not act as agent for her husband, and accordingly that there can be no contract of letting between the council and the husband.

2. Whether the council can regard the wife and the other man as being persons merely in occupation, and can proceed to serve the statutory notice on them under the Small Tenements Recovery Act, 1838, without the giving of any notice to quit in the first place, or

3. Whether in view of the fact that the other man is known under the husband's name it could be held, especially in view of the time that has lapsed since the purported granting of the tenancy, that the other man is in law the council's tenant.

4. Generally as to the method to be adopted to obtain possession of the premises.

BAFFO.

Answer.

1 and 3. The woman had a husband. She did not profess to make a contract on her own account, but purported to be his agent, and the council believed themselves to be contracting with him as her principal. But in truth she was neither an agent of necessity nor otherwise his agent. She may perhaps have been authorized by her paramour to make the contract as agent for him, but the council did not intend to contract with him. In our opinion no contract came into existence: *Cundy* v. *Lindsay* (1878) 42 J.P. 483; *Hardman* v. *Booth* (1863) 1 H. & C. 803, *per* Pollock, C.B., at pp. 806-7.

2. This query assumes that the Act of 1838 is the proper weapon. But that Act and s. 156 (2) of the Housing Act, 1936, presupposes a tenancy. The woman's payment, and the council's acceptance, of rent did not in this case create any tenancy. The woman and her paramour are in our opinion merely trespassers.

4. Assuming that the council have not received rent from the couple since ascertaining the facts (in which case an agreement to accept them as tenants might be implied) we think the proper course is to give

a week's notice (care being taken not to speak of their occupation as if it were a tenancy), and then to eject them without legal process: *cp. Butcher* v. *Poole Corporation* [1942] 2 All E.R. 572.

6.—Licensing—*Occasional licence to sell intoxicating liquor after 10 p.m.—Public dinner or ball—Meaning of public.*

Will you kindly give me your opinion on the interpretation of s. 151 of the Customs and Excise Act, 1952. Recently an application was made in my court for an occasional licence to sell intoxicating liquor until 11.30 *p.m.* in a works canteen. The occasion was a dinner and dance for the employees of the factory in question. I opposed this application on the grounds that the "occasion" was not, in my opinion, a public dinner or ball, as the only persons who were entitled to attend were the employees of one firm. The court ruled that it was not necessary for the general public to be admitted to comply with this section, and that the workers from one factory could be construed as coming within this section. There will be many similar applications made during the winter months in respect of different factories in this area, and I would appreciate your opinion on this matter.

O. ATLAS.

Answer.

In the absence of a definition of "public" in the Customs and Excise Act, 1952, and of binding case law on the point, we think that the justices, in the exercise of a judicial discretion, were enabled to grant an occasional license in the conditions outlined by our correspondent. We set out the reasons for this liberal interpretation of the law in our answer to P.P. 3 at 119 J.P.N. 242.

7.—Licensing—*Occasional licence—Grant of licence freed from conditions attaching to applicant's on-licence.*

A very large industrial concern in my division has a full justices' licence in respect of its restaurant subject to conditions, two of which are that there shall be no sales off the premises, and that liquor shall be supplied only to persons attending the aerodrome in connexion with air flights, or to persons thereon at the invitation of the company.

At one of their branch establishments in another division there is a large canteen in which various social events are held, and for which occasional licences have been obtained by a publican in that division. The company wish themselves to apply for an occasional licence and thus have the whole matter under their control, rather than bringing in an outside caterer, but it is suggested that the limitations above set out would prevent any such grant.

On the other hand, it is argued that the conditions affect the licence only when the sale or supply is taking place upon the premise in my division, and would not limit the scope of the licence elsewhere.

Any authority you can give for your view would also be most helpful.

OATFIELD.

Answer.

In our opinion, an occasional licence may be granted to the holder of the on-licence in our correspondent's division without regard to the restrictive conditions attaching to the on-licence which he holds. The occasional licence will be granted by the magistrates' court of the division in which the branch establishment is situated. See *R.* v. *Brighton JJ., ex parte Jarvis* [1954] 1 All E.R. 197; 118 J.P. 117, and our answers to Practical Points in our vols. 110 (at p. 611), 111 (p. 380), 116 (p. 477) and 118 (p. 413).

8.—Magistrates—*Jurisdiction and powers—"Contempt" of a magistrates' court—County bench sitting in a county borough courthouse—Venue—Procedure generally.*

I should appreciate your valued opinion upon the following:

It is generally stated that a magistrates' court has no power to commit for contempt of court but may:

1. Order the removal of the individual.
2. Order the individual to find sureties for good behaviour.
3. Treat as an indictable misdemeanour and issue a summons or warrant and charge the culprit on the spot.

Would you kindly advise:

(*a*) My magistrates sit for a petty sessional division of a county but sit in a courthouse situate in a county borough with a separate commission of the peace. Can they exercise the powers under (2) and (3) above or would county borough magistrates have to act since the acts of contempt would take place in the county borough? As to (2), ss. 91 and 44 of the Magistrates' Courts Act, 1950, appear to exclude jurisdiction but I am wondering if there is jurisdiction by virtue of the commission of the peace (s. 91 does not appear to be the last word upon the question of procedure—*see* note (*f*) in *Stone* 1955, vol. 1, p. 295 relating to another point).

(*b*) If the individual is the defendant (or other party) in a case proceeding in the court and he is removed under (1) above (assuming the case proceeding is not being dealt with as an indictable offence) can the magistrates proceed with the case in his absence even though he wishes to be present and he obviously cannot have his case properly conducted in his absence, especially if he is undefended?

(*c*) If the magistrates proceed under (2) and require sureties can they commit him for failure to find sureties at that sitting or must they give him time to find sureties and must they let him go away from the court to find them or may he be restrained from leaving the court?

(*d*) If the magistrates act under (2) can they simply order the individual to enter into a recognizance to be of good behaviour or keep the peace without requiring sureties?

SLOUCOR.

Answer.

(*a*) We think that the powers under (2) and (3) should be exercised by county borough magistrates and that steps should be taken to convene a special court to deal promptly with the matter. In any event it is better that magistrates not concerned in the incident should exercise those powers.

(*b*) We can find no authority on this point but we think that:

(i) In the case of an offence the court should adjourn the hearing and remand the defendant with a warning to him that it will have to continue so to do until he is prepared to behave properly in court.

(ii) In a civil case we think that the High Court would probably support the court in proceeding in the defendant's absence since the alternative must be that by continued misbehaviour in court he could prevent the matter from ever being heard and determined.

(*c*) He can be committed forthwith if he fails to find the required sureties. It is reasonable to give him every facility for getting in touch with possible sureties.

(*d*) Yes, if they think this will be effective.

9.—Precedence—*Position of police in processions.*

A detachment of police takes part in processions, usually to and from church, on civic Sunday, Remembrance Day, Battle of Britain Sunday, and other similar occasions. Is there any authority for the position the police should occupy in such processions and, if so, are there any exceptions?

A. UNCERTAIN.

Answer.

We do not know of any binding rule; the organizers of the procession are *prima facie* entitled to make their own arrangements. Seeing that every constable has a peculiar constitutional status as a public officer with special duties, we suggest as a working principle that a police contingent should come next after contingents (if present) of Her Majesty's forces, *i.e.*, should be given precedence over other contingents of civilians.